IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4389 of 1996

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SECRETARY,DISTRICT PANCHAYAT SERVICES SELECTION COMMITTEE & 1 - Appellant(s)
Versus
GOPALDAS BACHUBHAI PATEL & 2 - Defendant(s)

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Appearance :
MR SP HASURKAR for Appellant(s) : 1,MS RV ACHARYA for Appellant(s) : 2,MR VT ACHARYA for Appellant(s) : 2,
MR JV MEHTA for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/08/2006

ORAL JUDGMENT

1. Present appeal has been filed by the appellants herein – original defendants (hereinafter referred to as “the defendants”) challenging the

judgment and decree passed by the learned City Civil Court, Ahmedabad, dated 9th September, 1996 passed in Civil Suit No.2990 of 1990 in disposing of the said suit directing the defendants to release the appointment of the plaintiffs as per the select list/waiting list within a period of 30 days subject to approval procedure of the State Government.

2. The applications were invited by the defendant – Ahmedabad District Panchayat Office for 3 posts of Gram Sevaks. The plaintiffs also applied for the said posts. The written examinations were taken on 8th July, 1984 and the oral interview were also conducted and held on 19th January, 1985. The select list/waiting list was prepared by the Ahmedabad District Panchayat and the plaintiff No.1 was placed at serial No.12, the plaintiff No.2 was placed at serial No.18 and the plaintiff No.3 was placed at serial No.15. It appears that out of the aforesaid select list/waiting list, appointment of the Gram Sevaks were made by filling up 11 posts and

appointing the selectee upto serial No.11, however, further select list/waiting list was not operated and the plaintiffs were not issued appointment orders from the said select list/waiting list and the plaintiffs apprehended that the defendants are likely to cancel the select list/waiting list and are likely to go for preparing a new select list/waiting list and therefore, the plaintiffs filed the aforesaid Civil Suit being Civil Suit No.2990 of 1990 before the City Civil Court, Ahmedabad, for the declaration that the action of the defendants in not appointing the plaintiffs by not operating the select list/waiting list of 1985, as illegal and mala-fide. The plaintiffs also further prayed for an appropriate mandatory order directing the defendants to issue appointment orders and they have also further prayed for a permanent injunction restraining the defendants from preparing any new select list/waiting list. It appears that there was a ban over the new appointment by the government and therefore, the further select list/waiting list was not

operated.

3. The written statement came to be filed by the defendants at Exh.29 and along with the same, two Government Resolutions dated 10th July, 1989 and 22nd December, 1988 were produced. In para – 10 of the written statement, it was submitted that the government has already lifted the ban over the new appointment, however, the government has issued the orders to make the appointment of Gram Sevaks as per the letters dated 22nd August, 1989 and 22nd December, 1988. In the said suit, it was contended on behalf of the plaintiffs relying upon para – 10 of the written statement that in view of the lifting of the ban by the government, the defendants are now ready and willing to absorb all the plaintiffs as per the their serial number in the select list/waiting list and relying upon the para – 10 of the written statement and the aforesaid circulars, the learned trial Court disposed of the said suit directing the defendants to release the appointment orders of

the plaintiffs as per the select list/waiting list by observing that on reading para-10 of the written statement, it is clear that the State Government has directed to appoint new candidates and therefore, the plaintiffs are entitled to have the right of appointment for the aforesaid posts as per their serial number in the select list/waiting list. Being aggrieved and dissatisfied with the judgment and decree passed by the learned City Civil Court, Ahmedabad, in directing the defendants to release the appointment of the plaintiffs as per the select list/waiting list of 1985, the appellants herein – original defendants have preferred the present appeal.

4. Shri S.P.Hasurkar, learned advocate appearing on behalf of the appellants herein – original defendants, has vehemently submitted that there was no direction by the State Government to make any new appointment and that too from the select list/waiting list of 1985. It is also further submitted by him that the learned trial Court

has misread and misinterpreted para-10 of the written statement and has misconstrued the same by observing that the State Government has directed to appoint new candidates. He has submitted that as such even on merits also, the learned trial Court could not have directed to make the appointment from the select list/waiting list of 1985 as the select list/waiting list in question has already expired in view of the fact that the said select list/waiting list was prepared on the basis of the applications invited for 3 posts only and normally the said select list/waiting list is to be restricted to only 3 posts for which, there was a requisition and/or advertisement. It is submitted that therefore, when the select list/waiting list of 1985 itself is exhausted, there was no question of further appointment on the basis of the said select list/waiting list of 1985 after even filling up 3 posts of the Gram Sevaks. It is, therefore, submitted that the learned trial Court has materially erred in directing the defendants to issue appointment

orders.

5. On the other hand, Shri J.V.Mehta, learned advocate appearing on behalf of the respondents herein – original plaintiffs, has submitted that the submission on behalf of the defendants that the select list/waiting list has expired on filling up 3 posts of Gram Sevaks, cannot be accepted as admittedly from the said select list/waiting list of 1985, 11 posts of Gram Sevaks were filled in and the further select list/waiting list was not operated and/or further appointments from the said select list/waiting list was not made as there was a ban imposed by the State Government over the new appointments. He has submitted that in view of lifting of the ban, further select list/waiting list was to be operated and the defendants were bound to operate the select list/waiting list further and also bound to issue appointment orders as per the serial number and therefore, the learned trial Court has not committed any error in directing to issue appointment orders

as per the serial number and therefore, it is requested to dismiss the present appeal.

6. Heard the learned advocate appearing on behalf of the parties.

7. On going through the judgment and decree passed by the learned trial Court which is of only one and a half page, while directing the defendants to release the appointment of the plaintiffs as per the select list/waiting list, the learned trial Court has relied upon para-10 of the written statement and on reading of para-10 of the written statement, the learned trial Court has held that the State Government has directed to appoint new candidates and therefore, the plaintiffs are entitled to have their right of their appointment for the aforesaid posts as per their serial numbers in the select list/waiting list. Now, on reading para-10, there is no such admission on the part of the State Government. In para-10 of the written statement, what is stated is that it is true that the State

Government has lifted the ban over making new appointments in government and semi-government institutions, however, the State Government has issued the orders of making appointment by issuing Government Resolutions dated 10th July, 1989 and 22nd December, 1988 with regard to the appointments of the Gram Sevaks and the xerox copies are annexed. Now, considering para-10 of the written statement, it cannot be said that there was any statement that the government has directed to appoint new candidates. It appears that the learned trial Court even not cared to go through the Government Resolutions dated 10th July, 1989 and 22nd December, 1988, which were referred to in para-10 of the written statement and which were annexed with the written statement. On going through the Government Resolutions dated 10th July, 1989 and 22nd December, 1988, it cannot be said that the State Government has directed to make new appointments and that too from the select list/waiting list, which has expired. It appears that the learned trial Court has misread, misinterpreted and

misconstrued para-10 of the written statement. The learned trial Court has not considered the purpose and scope of the preparation of select list/waiting list. Apart from that, the reading of para-10 of the written statement as done by the learned trial Court is absolutely perverse and improper. The learned trial Court while disposing of the aforesaid suit and directing the defendants to release appointments, has misread para-10 of the written statement. In the written statement, more particularly, at para-10, the only thing, which was submitted was the factum of lifting of the ban and the aforesaid two Government Resolutions were referred to nothing further, as has been stated in the said written statement. Under the circumstances, the learned trial Court has materially erred in disposing of the said suit directing the defendants to release appointments on the basis of the select list/waiting list.

8. Even otherwise, on merits also, the law on the subject with regard to validity of the select

list/waiting list is very much clear. It is an admitted position that the advertisement was for filling up 3 posts of the Gram Sevaks and on the basis of the said advertisement, after interview, a select list/waiting list was prepared. Normally, the select list/waiting list is valid for the only posts, which is advertised and therefore, as such, on filling up 3 posts of the Gram Sevaks, the select list/waiting list is exhausted and there was not question of further appointment of the Gram Sevaks on the basis of the said select list/waiting list, still for whatever be the reason, the defendants filled in 11 posts of the Gram Sevaks from the said select list/waiting list. As such, to fill up more than 3 posts of Gram Sevaks from the said select list/waiting list itself was not proper on the part of the defendants. Be that as it may, to further operate the select list/waiting list for the posts, which was not advertised, no relief can be granted as the select list/waiting list has been exhausted. Once the select list/waiting list is exhausted, the validity of the same,

will not be continued and therefore, the plaintiffs have no right on the basis of the said select list/waiting list of 1985 for future appointment/posting.

9. Time and again, the Hon'ble Supreme Court has held that nobody can claim any right merely because his name is selected in the select list/waiting list and for selection and recommendation of larger number of persons and the requisition and the appointment on additional posts than number for which requisition was sent on the basis of such selection is not valid. The Supreme Court in case of ***Hoshir Singh V/s. State of Haryana and Others*** reported in **AIR 1993 SC P.2606** has held that where the Selection Board was required to send its recommendation for certain number of posts only but the Board made recommendations of larger number of persons than the number of posts for which requisition was sent, appointment on additional posts on the basis of such selection would be legally unsustainable.

The Hon'ble Supreme Court further observed that such appointment would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who became eligible for appointment would be entitled to apply for the same. In another decision in case of ***State of Punjab V/s. Raghbir Chand Sharma and Another*** reported in **(2002) 1 SCC P.113**, the Hon'ble Supreme Court has in case where the requisition and the advertisement for a single post, observed as under :-

> *"With the appointment of the first candidate for the only post in respect of which the select panel was prepared, the panel ceased to exist and has outlived its utility and no one else in the panel can legitimately contend that the he should have been offered appointment either in the vacancy arising on account of the*

subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently."

10. In view of the above, even on merits also, the learned trial Court could not have directed to make the appointment from the aforesaid select list/waiting list of 1985 and ought not to have directed to release the appointments as per the serial number in the select list/waiting list of 1985. Under the circumstances, on merits also, the plaintiffs could not have claimed any right on the basis of the select list/waiting list of 1985. Under the circumstances, on merits also, the direction issued by the learned trial Court to release the appointments from the select list/waiting list of 1985 required to be quashed and set aside.

11. For the reasons stated above, the appeal succeeds. The judgment and decree passed by the learned trial Court in directing the defendants to release the appointment orders in favour of the plaintiffs on the basis of the select

list/waiting list of 1985 is hereby quashed and set aside, however, considering the submissions made by the learned advocate appearing on behalf of the plaintiffs that they are very poor, there shall be no order as to costs.

[M.R.SHAH, J.]

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